File No. 114-05

Serial Nos. 151.

190 5.06

GENERAL AND REVENUE SECRETARIAT.

Jeff Rec

Part A: Manuscript
for Year 1906

Serial Nos. 154

Appeal from Chairman
Panchama of Shencottah against
the order of the Deputy Collector
refusing to exclude the land
of the Proprietor's Estate in Sl. No. 4
of the Shencottah Register in respect
of a sale deed executed in his
favor by one Sulaiman Rowther

G.-R. S. 11 [illegible]

GENERAL AND REVENUE SECRETARIAT

NOTES.

File. No 114-05

FILE HEADING.

Appeal from one Chamappa Pamanna against the order of the Deputy Commr refusing to give him the benefit of the Proviso to the Explanation under S-46 of the Stamp Regulation

From Chamappa Pamanna

No. Rel- Dated 31/4 05 Received 8/1/05

~~Diary No. 2264~~ Enclos. 3 Spare Copies. } ~~Serial No. 1~~

BRIEF ABSTRACT OF LETTER.

Appeals against the order of the Deputy Commr Dharwar directing the recovery from him of a deficit Stamp Duty of Rs 60 a penalty of Rs 5/- in respect of a Sale Deed executed in favour of one Nagarada Subbanna Gowda, and states that the Dy Commr declined to give him the benefit of the Proviso to the Explanation under S. 46 of the Stamp Regulation

NOTES AND ORDERS.

one Subbaniamma Gowda of the Plaintiff's own purchased 2 Laccas for Rs 77/ at a public auction in the execution of a Civil Court decree. The Lands were had been mortgaged

Notes—First sheet.

MGCPB—30,000—17-2-05.

Serial No.

the Petitioner for Rs 400/- Subtalumanya pois subsequently sold the lands to the Petitioner for Rs 95/- & executed the Sale deed on 20/Jul/1905 ~~[illegible]~~ in favour, & taken of the value of one rupee but the Dy Commissioner is duty of Rs 57-, taking into account the amount of Mortgage, (Rs 400/-) as part of the consideration for the Sale - the Peter Contends that he is not liable to bear the additional Stamp duty demanded of him for the following reasons viz., 1) Subtalumanya Sankara ~~[illegible]~~ in the auction Sale only to the extent of the right title & interest which the judgt debtor had in the property for Rs 772 & the same was transferred to himself - Peter only to that extent, or that,)

OR

2) If the Mortgage amount (Rs 400/-) is to be treated ~~considered~~ as part of the Consideration for the Sale between the auction purchaser & the petitioner, the same should be given the benefit of the provisions to the Explanation in

MGCPB—20,000—1-11-04.

G.R.S. 12
General and Revenue Secretariat.

File No. 114 of 1904

Serial No.

See 24 of the Stamp Regulation. We addressed accordingly from the Honorable Land Reports are less favor. Before deciding the question I will see letter to obtain a report promptly Comm. A copy is accordingly ordered for all personal or orders

S.R.K. [illegible]

Must note worthy
S. Satyanarayanachetty 14
15.2.06

Regd
B.K. Venkatavaradan
16-2-1906

2 To the Dy. Comr. Chingleput
No. 75 (56 of the 07-08) forwarding the above for report

3 From the Dy. Comr. Chingleput
No. 881/638 & the D.W. marked
states that before
Jois (Co-sharer) or [illegible]
purchased the property in the
Court-sale held on the 17th Aug 77
encumbrance & sold it
to the [illegible]

MGCPB—20,000—1-11-04.

G.R.S. 12]
General and Revenue Secretariat.

Srn/h File No. 114 of 1905

Serial No.

the mortgage money, viz Rs 1400/ ~~he~~ he takes as part of the Consideration in respect of ~~the~~ the transaction treats stamps duly on the full amount viz Rs 1957. was therefore issued; ~~and~~ that the authority quoted by the Petr Counsel refers to this Case & does not apply to this Case as there was not a bond to the original mortgage: and that he (Petr) Counsel therefore claim the benefits of the Proviso refd to is not

duly The recn taken by the Dy. Comr seems to be correct. The petition may be rejected

for III may also be Consulted if necessary before ordersare issued

1905 K 5/4/06 ~~Inter~~ Where a Case in which the sale purchaser or an immoveable property subject to a mortgage, Conveys the property to the ortgagee the value on stamp ~~duty~~ on the Conveyance duly paid ~~is~~ proven as Valorem duty amount of the money

NOTE.—Contn. sheet.

MGCPB—20,000—1-11-04

paid as Consideration of the Sale

The Deputy Comr Considered that the value on the stamp used was sufficient, holding that the mortgage amount must also be considered as part of the purchase money and levied the duty on the total amount as well as a penalty. He also held that the petitioner was not entitled to the benefit of Section 24 of the Stamp Act.

The Col. Board (petitioner) now contends

i that the meaning of Consideration as understood by H. Deputy Comr is not correct but that the Consideration for the sale is the amount actually paid as the purchase money

ii that even if it should be held that the Dy Commissioners interpretation of the term is correct, he is not entitled to the

G.R.S. 12]
General and Revenue Secretariat.

S. R File No. 114 of 1905-06

Serial No.

benefit of the proviso to Engl. to section 24 of the stamp Regulation

The question as to what should be held to form the Consideration in a case such as the present whether it should be limited to the actual purchase money or represent the total of the purchase money and the mortgage debt has been the subject of considerable discussion and conflict of opinion among the several High Courts The Bombay High Court have held that the prior encumbrances the mortgage debt must be computed as part of the purchase money while the other High Courts have held that only the actual sale amount should form the Consideration for the sale. The question has been frequently discussed in I.L.R. X Cal. 92.

As there is such difference of views in the matter Branch III may be Consulted

NOTE—Contn. sheet

MGCPB—50,000— 24-7-05

[G.R.S. 12]
General and Revenue Secretariat.

S. R. File No. 114 of 1905-06

Serial No.

The second ground on the petition however, seems to be in his favor. It is that he is entitled to the benefit on the proviso to Section 24 of the Stamp Regulation The Deputy Commissioner has disallowed this claim on the ground that the person who conveyed the property to the mortgagor and not the mortgagee. The agreement is not sound. for the sale purchaser stands in the place of the mortgagor. Lawrie Stephens puts his shoes as regards his right title and interest in the property sold. Besides, the section requires that the person conveying the encumbered property should be the mortgagor himself. It seems reasonable therefore that the petitioner should be given the benefit of the proviso to Section 24 of the Stamp Regulation

Yes Sir K.S.C

Branch III may be Communicated. Yes sir Krishna Rao 9-4-06

N.K. 7/4.

NOTE—Contn. sheet

MGCPB—50.000—24-7-05

.R.S. 12]
General and Revenue
Secretariat.

File No. 114 of 1905

Serial No.

I agree, for the reasons stated above, that the petitioner is entitled to the benefit of the proviso to the explanation to s. 24, so as to entitle him to deduct from the duty payable on the transfer the amount of duty already paid in respect of the mortgage.

At the same time, the Deputy Commissioner was right in including in the consideration for the transfer the amount of the unpaid mortgage money to which the property sold was subject, as required by the Explanation to the same section.

The real meaning of s. 24 will be clear if the explanation and the proviso are read consistently with each other. The former relates to the calculation of the consideration for the sale; the latter permits of the deduction, from the stamp duty payable on such consideration, the duty already paid on a former occasion.

M. Chandrasekhara
15-4-06

Submitted to answer.

Please submit a draft accordingly.
18/4/06

MGCPB—50,000—24-7-05

S/4 File No. 14 of 1905

Serial No.

Draft Sealed & endorsement to the Petralbo
Sealed
25/4/06 Draft sub^d to Secy
M.K.K. Srinivasa Raj
25/4/06

Submitted with a revised
draft office order as directed by the Secretary
25.4.06 Sub^d to Secy
M.K. Srinivasa Rao
25-4-06

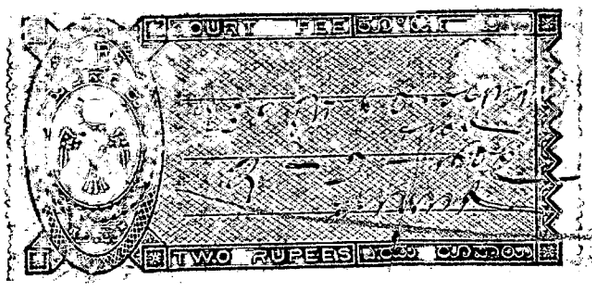
Perused G.K. Venkatavaradayya Pe
24/4/06

30.4.06

24 To the Surveyor General & other District
& the Inspector Genl. of Registration
Nos. 7430-8, & the 5th inst. forwarding
observations with the Principal
to the explanation in Sec 24 referred
to in proceedings of the Registering
Officer & Sub-Registrar, to the
mortgagee & not necessarily
on the mortgagor, the petitioner
is entitled to the benefit of the
above proviso
2nd Chamarajpet Ramanna -
Nos. 7439. & the 5th inst.
Mfr. in line accordingly as
referred to the Surveyor Genl.

NOTE—Contn: sheet

GPB—50,000—23 10·05



O.S. 3260

(Sl. 1)

GOVERNMENT OF H. H. THE MAHARAJA OF MYSORE.

General and Revenue Secretariat.

(Ll:2)

Office Memorandum.

No. H 5760 / 1405-7 Dated Bangalore, the 19-2-1906.

* Subject.	The accompanying Petition* Registered as
The levy of a official stamp duty & penalty in respect of a Sale Deed executed in his favour by one Nafanada Subrahmanya Jois of the Shimoga town.	No. 3260 dated the 31st January 06 received in this office, from one Chamegowda Ramana residing in the Shimoga town

is forwarded to the Dy. Comr. of the Shimoga District for ~~favourable~~ report.

By Order,

16-2-1906

For *SECRETARY.*

GPB—1,000—23-11-05.

Mer

No. 881/638

Deputy Commissioner's Office
Shimoga District,
Dated 23rd Mar 1906

(8C-3)

From,

M. S. Narayana Rao Esqrs
Deputy Commissioner,
Shimoga District.

To,

B. K. Venkatavardaraja Iyengar Esq
Secretary to Government
General & Revenue Depts.

Sir,

With reference to your Memorandum No. Rl. 516 dated 19th (P. III-15-7) February 1906 forwarding for report petition registered No. 3260 dated 9th January 1906 received from one Chennakiri Ramanna praying for cancellation of my order regarding the levy of deficit Stamp duty and penalty in respect of a sale deed executed in his favour, I have the honour

+

S.R. 114-05 3968

From M.S. Narayanan
Deputy Commissio
Shimoga Distr

To B. K. Kukata Varda
Secretary to Gov
General & Revenu

Dated

Despatched 23rd March 906.

Received

General No. 881
No. 638.

Enclosure No. 1 file

With reference to the
randum No. 7 L. 5160
S.R. 114-05-2
Dated 19th February 90
forwarded with observa
the petition with encl

to state as follows.

1. The document in question relates to the sale of two lands bearing Survey nos 85 and 98 of the same Kadur village, Shimoga Taluk for Rs 957 by one Subba Does the purchase of the said property for Rs 777 in a sale held on 30th March 1905 in accordance with the orders of the Munsiff Court, Shimoga The sale was held subject to the encumbrance amounting to Rs 2004.14 natural interest on the purchase of property subject to an encumbrance is that the consideration that is paid is not merely the amount that is paid at the time of the sale but also includes the amount that has to be paid afterwards for the release of the encumbrance Vide Explanation

to

to Section 24, Stamp Act.). The Stamp duty has to be calculated on the amount immediately paid plus the amount to be paid before the property can completely pass to the purchaser. In the case in question the consideration that was paid by the auction purchaser may be taken to amount to Rs 477/- and the amount realized by him for conveying the property to the petitioner thereof Rs 695/-

2. For the aforesaid reasons, I found there was deficiency of Stamp duty and ordered its levy.

3. With regard to the case published on page 257 of Volume XXIV of the Bombay Series of the Indian Law Reports and relied on in para 5 of the petition, I beg to state that

that it lays down that rent reserved is not liable to ad valorem duty and has no bearing to the case under consideration. To claim concession of the proviso under explanation to Section 24 of the Stamp Act as attempted in para 3 of the petition, the transfer to the mortgagee must have been made by the mortgagor which is not the case here the petition with enclosures received with the Memorandum referred together with the original records and correspondence during the Shirastha Taluk Amildar's No. 491 dated 3rd March 1906 are herewith forwarded for reference

reference and return of the letter file when no longer required.

The amount of duty and penalty has been recovered and credited by C No 216 dated 13.3.905 in the Shimoga Taluk. I have the honour to be,

Sir

Your most obedient Servt

Chairman by Cutty

For Deputy Commissioner
Shimoga District.

G.R.S. 28]

File No. ~~444-05~~

Serial No. 1 ~ V

Diary No. of letter replied to 39/08

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT

(J. P.)

REAL.

Petition registered vide 3260.8 the 31 or parcels Gole from Channagiri Ramanna of Arsikere stating that one Subbaiah Iranya Jois purchased two lands for Rs 77/- in a public auction subject to their mortgage to himself (Petitioner) for Rs 400/- that subsequently Subbaiah Jois sold these lands to him for Rs 95 and

over

, the 5-5- 1906

Date of issue

Signed by

ORDER THEREON.—Next in satisfaction of a Civil Court decree

SUBJECT

6

MGCPB—20,000—24-2-05

executed a sale deed
on a stamp paper of
the value of one rupee
~~and~~ that the Deputy
Comr of the Shimoga
District has levied
an ~~official~~ additional stamp duty
of Rs 4/- and a penalty
of Rs 5/- taking into
~~account~~ the mortgage
money as part of
the consideration for
the sale without
giving him credit for
the stamp duty
already paid on the
original mortgage
deed in accordance with the proviso
to the "Explanation" to Sec
24 of the Stamp Regulation
II of 1900 and requesting that the order of the Dy Comm
may be cancelled.

2.) Letter no. 881/638, D

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

the 23rd. March 1906, from the Dy. Comr. of the Shimoga District reporting with reference this office memo. No 5100. of the 9th. February 1906 that the Sale of the Mosque having been effected subject to the Provisions ~~essen~~ encumbrance the mortgage money also formed part of the Consideration for the Sale that the Claim duly on the full amount i.e. Rs 4 '5) 4951 was therefore levied under ~~the~~ the Explanation to sec. 24 and that as the person who paid the proceeds to the Petitioner Mortgagee, was not the mortgagor himself the Petitioner Comr. not Claim the benefits of the proviso to the Explanation, reserved

Order thereon No H 7430-8 & 5-5-06
S.R 114-05-4

The Deputy C's
Com's was right in
including in the Consi
deration for the transfer
the amount of the
unpaid mortgage
money to which the
property sold was
subject, as clearly
required by the "Explanation"
to Section 24 of the
Stamp Regulation.
But as the purchaser of the property in the
stands in the place Court sale
of the mortgagor as
regards the right, title
and interest in the
property sold and
as the "proviso" to the
"Explanation" refers
only to the transfer of
the property subject
to a mortgage to the
mortgagee and not
necessarily by the
mortgagor, the petitioner
is entitled to the
benefit of the ~~proviso~~
above

P.T.O.

3/ Jno

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

above referred

(*Continuation Sheet draft form.*)

Issued

30/4/1956

Issued

To The Director Census of the Municipal Districts

The Enclosures

The Secretary to all other Districts

The Inspector General of Registration

Issued

27.4.56

Issued

Endorsement No. 114 of 05
R 7439

ದಿನಾಂಕ 114-05-5

5-5-06

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

[illegible] 30/4/1[illegible]

[illegible]

[illegible] [illegible] 25/4/[illegible]

ORIGINAL

1905-06

FILE No. 114 OF 1905-06.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

SEPARATE REVENUE

MAY 1906

"A" Collection Serial Nos. 1—5

Appeal from one Channagiri Ramanna against the orders of the Shimoga Deputy Commissioner refusing to give him the benefit of the proviso to the "Explanation" in Section 24 of the Stamp Regulation, II of 1900.

TABLE OF CONTENTS.

Serial No. of File	Number and date of letter and contents	References	Page in A Progs.
1	From Channagiri Ramanna, petition dated the 31st January 1906. Appeals against the order of the Shimoga Deputy Commissioner directing the levy of a deficit stamp duty of Rs. 4 and a penalty of Rs. 5 in respect of a sale deed executed in his (petitioner's) favor by one Nagarada Subrahmanya Jois and states that the Deputy Commissioner has declined to give him the benefit of the proviso to the "Explanation" in Section 24 of the Stamp Regulation, II of 1900.		1
2	To the Deputy Commissioner, Shimoga, No. Fl. 5160, dated the 19th February 190 Calls for a report on the above.		1
3	From the Deputy Commissioner, Shimoga, No. 881-638, dated 23rd March 1906. States that Subba Jois (Subrahmanya Jois) having purchased the property in the Court sale for Rs. 77, subject to the encumbrance and sold it in his turn to the petitioner for Rs. 95, the mortgage money *viz.*, Rs. 400, forms part of the consideration in respect of both the transactions; that stamp duty was therefore levied on the full amount, *i.e.*, Rs. 400+95-495 under explanation to Section 24 of the Stamp Regulation, that the authority quoted by the petitioner does not apply to his case as he was not a party to the original mortgage and as it states that rent reserved is not liable to duty and that the petitioner cannot therefore claim the benefit of the proviso to the section refered to by him.		2
4	To the Deputy Commissioner, Shimoga, and the Deputy Commissioners of other Districts and the Inspector-General of Registration, No. Fl. 7308, dated the 5th May 1906. Observes that as the proviso to the explanation to Section 24 of the Stamp Regulation refers only to the transfer of the property subject to a mortgage to the mortgagee and not necessarily by the mortgagor, the petitioner is entitled to the benefit of the above proviso.		2
5	To Channagiri Ramanna, No. Fl. 7439, dated the 5th May 1906. Communicates the above and refers him to the Deputy Commissioner, Shimoga, for further action.		3

1905-06

GENERAL AND REVENUE SECRETARIAT

(SEPARATE REVENUE)

FOR MAY 1906

NOTES

File No. 114 of 1905.

Appeal from one Channagiri Ramanna against the orders of the Shimoga Deputy Commissioner refusing to give him the benefit of the proviso to the "Explanation" in Section 24 of the Stamp Regulation.

From Channagiri Ramanna, Petition, dated 31st January 1906.

Appeals against the order of the Deputy Commissioner, Shimoga, directing the levy from him of a deficit stamp duty of Rs. 4 and a penalty of Rs. 5, in respect of a sale deed executed in his favor by one Nagarada Subrahmaniya Jois, and states that the Deputy Commissioner declined to give him the benefit of the proviso to the explanation in Section 24 of the Stamp Regulation.

One Subrahmaniya Jois of the Shimoga town purchased two lands for Rs. 77 in a public auction in the execution of a Civil Court decree. The said lands were previously mortgaged to the petitioner, for Rs. 400. Subrahmaniya Jois subsequently sold the lands to the petitioner for Rs. 95 and executed a sale deed on 20th November 1905, on a stamp paper of the value of one rupee; but the Deputy Commissioner levied a duty of Rs. 5, taking into account the amount of mortgage (Rs. 400) as part of the consideration for the sale. The petitioner contends that he is not liable to pay the additional stamp duty demanded of him for the following reasons that :—

Subrahmaniya Sastri purchased in the auction sale only so much of the right, title and interest, which the judgment-debtor had in the property for Rs. 77 and transferred the same to himself

(2) that if the mortgage amount (Rs. 400) is to be treated as part of the consideration for the sale (between the auction purchaser and the petitioner) he should be given the benefit of the proviso to the explanation in Section 24 of the Stamp Regulation. He adduces an authority from the Bombay Law Reports in his favor. Before deciding this question, it will be better to obtain a report from the Deputy Commissioner. A draft is accordingly submitted for approval or other orders.

T. G. K.
4-2-06.
Draft submitted to Secretary.

T. SATYARAJA CHETTY
15-2-06.

T. K.
15-2-06.

Passed.
B. K. VENKATA VARADA IYENGAR.
16-2-06

To the Deputy Commissioner, Shimoga District, No. Fl. 5160, dated the 19th February 1906

Forwards the above for report.

From the Deputy Commissioner, Shimoga District, No. 881-638, dated the 23rd March 1906.

States that Subba Jois (Subrahmaniya Jois) having purchased the property in the court sale for Rs. 77 subject to the encumbrance and sold it to the petitioner for Rs. 95, the mortgage money, *viz.*, Rs. 400, should be taken as part of the consideration in respect of the two transactions, that Stamp duty on the full amount, *i.e.*, Rs. 495, was therefore levied, that the authority quoted by the petitioner did not apply to his case as Subba Jois was not a party to the original mortgage; and that he (petitioner) could not therefore claim the benefit of the proviso referred to by him.

Submitted. The view taken by the Deputy Commissioner seems to be correct. The petition may be rejected. Branch III may also be consulted, if necessary, before orders are issued.

T. G. K.
5-4-06.

This is a case in which the sale purchaser of an immoveable property, subject to a mortgage, conveyed the property to the mortgagee, the value of stamp on the conveyance deed being the proper *ad valorem* duty on the amount of the money paid as consideration of the sale.

The Deputy Commissioner considered that the value of the stamp used was deficient, holding that the mortgage amount must also be computed as part of the purchase money and levied the duty on the total amount and also a penalty. He also held that the petitioner was not entitled to the benefit of Section 24 of the Stamp Regulation.

The sale purchaser (petitioner) now contends—

(i) that the meaning of consideration as understood by the Deputy Commissioner is not correct, but that the consideration for the sale is the amount actually paid as the purchase money,

(ii) that even if it should be held that the Deputy Commissioner's interpretation of the term is correct, he is still entitled to the benefit of the proviso to explanation to Section 24 of the Stamp Regulation.

The question as to what should be held to form the consideration in a case such as the present, whether it should be limited to the actual purchase money or represent the sum total of the purchase money and the mortgage debt, has been the subject of considerable discussion and conflict of opinion among the several High Courts. The Bombay High Court have held that the prior encumbrance, the mortgage debt, must be computed as part of the purchase money, while the other High Courts held that only the actual sale amount should form the consideration for the sale. The question has been thoroughly discussed in I. L. R. X Cal. 92.

As there is such difference of views in the matter, Branch III may be consulted.

The second ground of the petitioner, however, seems to be in his favor. It is that he is entitled to the benefit of the proviso to explanation to Section 24 of the Stamp Regulation. The Deputy Commissioner has disallowed this claim on the ground that the person who conveyed the property to the mortgagee was not the mortgagor. The argument is not sound. For the sale purchaser stands in the place of the mortgagor, having stepped into his shoes as regards his right, title and interest in the property sold. Besides, the section itself requires nowhere that the person conveying the encumbered property should be the mortgagor himself. It seems reasonable, therefore, that the petitioner should be given the benefit of the proviso to explanation to Section 24 of the Stamp Regulation.

Yes.
K. S. C.

Branch III may be consulted.

N. K.
7-4-06.

Yes.

M. N. KRISHNA RAO.
9-4-06.

I agree, for the reasons stated above, that the petitioner is entitled to the benefit of the proviso to the explanation to Section 24, so as to entitle him to deduct from the duty payable on the transfer the amount of duty already paid in respect of the mortgage.

At the same time, the Deputy Commissioner was right in including in the consideration for the transfer the amount of the unpaid mortgage money to which the property sold was subject, as clearly required by the explanation to the same section.

A careful reading of Section 24 will show that the explanation and the proviso are not inconsistent with each other. The former relates to the calculation of the consideration for the sale; the latter permits of the deduction, from the stamp duty payable on such consideration, the duty already paid on a former occasion.

K. S. CHANDRASEKHARA AIYAR.
15-4-06.

Submitted to Assistant Secretary, Financial Branch.

N. K.
17-4-06.

Please put up a draft accordingly.

M. N. KRISHNA RAO.
18-4-06.

Draft submitted. An endorsement to the petitioner also put up.

T. G. K.
20-4-06.

N. K.

Draft submitted to Secretary.

M. N. KRISHNA RAO.
25-4-06.

Submitted with a revised draft of the order as directed by the Secretary.

T. G. K.
27-4-06.

B. K.
28-4-06.

Submitted to Secretary.

M. N. KRISHNA RAO.
?-4-06.

Passed.

B. K. VENKATA VARADA IYENGAR.
30-4-06.

To the Deputy Commissioners of Shimoga and other Districts and the Inspector-General of Registration. No. Fl. 7430-8, dated the 5th May 1906.

Observes that, as the proviso to the explanation in Section 24 refers only to transfers of real property subject to a mortgage to the mortgagee and not necessarily by the mortgagor, the petitioner is entitled to the benefit of the above proviso.

To Channagiri Ramanna, No. Fl. 7439, dated 5th May 1906.

Informs him accordingly and refers him to the Deputy Commissioner, Shimoga.

Proceedings of the Government of His Highness the Maharaja of Mysore, Finance (Separate Revenue), May 1906.

Appeal from one Channagiri Ramanna, against the orders of the Shimoga Deputy Commissioner refusing to give him the benefit of the proviso to the explanation in Section 24 of the Mysore Stamp Regulation, 11 of 1900.

FILE No. 114 of 1905-06.

ಮೈಸೂರು ಶೀಮೆಯ ರಾಜ್ಯಭಾರದ ಮೆಹರ್ಬಾ ದಿವಾ ಸಾಹೇಬ್ ಬಹದೂರರವರ ಸನ್ನಿಧಾನಕ್ಕೆ.

ಶಿವಮೊಗ್ಗ ಕಸಬಾ ವಾಕಿ ಚನ್ನಗಿರಿ ರಾಮಣ್ಣ ನು ಬರಕೊಂಡ ಅಪೀಲು ಕೋರ್ಜ ತಾರೀಖು 31—1—06.

1. ಶಿವಮೊಗ್ಗ ಕಸಬಾದಲ್ಲಿರುವ ನಗರದ ಸುಬ್ರಮ್ಮಣ್ಯ ಜೋಯಿಸರು ಶಿವಮೊಗ್ಗ ಮುನ್ಸಿಫ್ ಕೋರ್ಟು ಮೂಲ್ಕ ಆದ ಹರಾಜಿನಲ್ಲಿ ಕ್ರಯಕ್ಕೆ ಪಡೆದ ಸೊತ್ತುಗಳನ್ನು ನನಗೆ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟು, ದಸ್ತೈವಜು ಬರಕೊಟ್ಟದ್ದನ್ನು ಶಿವಮೊಗ್ಗ ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರರವರ ಆಫೀಸಿಗೆ ರಿಜಿಸ್ಟರ್ ಬಗ್ಗೆ ಹಾಜರ್ಪಡಿಸಲಾಗಿ ಅವರು ಸ್ಟಾಂಪ್ ಕಮ್ಮಿಯಾಗಿದೆ ಎಂತ ಇಂಪೌಂಡ್ ಮಾಡಿ ಡೆಪ್ಯುಟಿ ಕಮಿಷನರ್ ಸಾಹೇಬರವರ ಆರ್ಡರ್ ಬಗ್ಗೆ ಕಳಿಸಿಬಿಟ್ಟರು. Serial No. 1.

2. ಡೆಪ್ಯುಟಿ ಕಮಿಷನರವರು ಸದರಿ ದಸ್ತೈವಜಿಗ ಮೊದಲಿನ ಅಡವಿನ ಹಣವು ಹಾಲಿ ಕ್ರಯದ ಮೊಬಲಗೂ ಎರಡೂ ಕೇರಿ ಪ್ರತಿಫಲವಾಗಿಟ್ಟುಕೊಂಡು ಸ್ಟಾಂಪು ಕಮ್ಮಿಯಾಗಿರುವದು ನಿಜವೆಂದು ಅಭಿಪ್ರಾಯಪಟ್ಟು ಶಿವಮೊಗ್ಗ ತಾಲ್ಲೂಕು ಅವುಲ್ದಾರ್ರವರಿಗೆ ಕಮ್ಮಿ ಸ್ಟಾಂಪನ್ನು ಮತ್ತು ಪೆನಲ್ಟಿಯನ್ನು ವಸೂಲ್ಮಾಡಬೇಕಾಗಿ ಆರ್ಡರ್ ಮಾಡಿದರು. ನಂತರ ರಿಜಿಸ್ಟ್ರೇಷನ್ ಇಲಾಖಾ ಇನ್ಸ್ಪೆಕ್ಟರ್ ಜನರಲ್ ಸಾಹೇಬರವರಿಗೆ ಅರ್ಜಿ ಬರಕೊಂಡದ್ದಕ್ಕೆ ಈ ವಿಷಯದಲ್ಲಿ ತಾವು ಪ್ರವರ್ತಿಸುವದಿಲ್ಲ ಎಂತ ಇಂಡಾರ್ಸ್ ಅಪ್ಪಣೆ ಕೊಡಿಸಿದರು

3. ಸ್ಟಾಂಪ್ ರೆಗ್ಯುಲೇಷನ್ 24ನ ಸೆಕ್ಷನ್ ಅನುಸರಿಸಿ ಹಾಲಿ ಕ್ರಯದ ಮೊಬಲಗನ್ನು ಮತ್ತು ಪೂರ್ವದ ಅಡವಿನ ಮೊಬಲಗನ್ನು ಸಹಾ ಈ ಪತ್ರಕ್ಕೆ ಪ್ರತಿಫಲವಾಗಿಟ್ಟುಕೊಂಡಾಗ್ಯೂ ಸದರಿ ಸೆಕ್ಷನ್ಗೆ ಇರತಕ್ಕ ಪ್ರಾವಿಜ್ ಅನುಸರಿಸಿ ಪೂರ್ವದ ಅಡವು ದಸ್ತೈವಜುಗಳ ಮೇಲೆ ತೆತ್ತಿರತಕ್ಕ ಸ್ಟಾಂಪು ಡೂಟಿಯನ್ನು ಸಾಲಿ ಲೆಕ್ಕಾ ವಸೂಲು ಮಾಡಿಕೊಳ್ಳುವದು ಸಾಲಿ ಲೆಕ್ಕಾ ಮಾಡಿಕೊಳ್ಳುವದು ಮಾಡಿರುತ್ತೆ.

4. ಹಾಲಿ ಆಗಿರತಕ್ಕ ಕ್ರಯ ಪತ್ರವು ಕೋರ್ಟು ಹರಾಜಿನಲ್ಲಿ ಪಡಕೊಂಡ ಸದರಿ ಸುಬ್ರಮ್ಮಣ್ಯ ಜೋಯಿಸರಿಗೆ ಕ್ರಯ ಸೊತ್ತಿನಲ್ಲಿ ಇರತಕ್ಕ ಹಕ್ಕು ಬಾಧ್ಯತೆ ಮಾತ್ರ ಕ್ರಯವಾಗಿರುವದರಿಂದ ಸದರಿ ಪ್ರತಿಫಲಕ್ಕೆ ತಕ್ಕ ಸ್ಟಾಂಪ್ ಡ್ಯೂಟಿ ವಸೂಲ್ಮಾಡತಕ್ಕದ್ದು ವಿಧಾಯಕವಾಗಿದೆ. ಪುರು ಅಡವು ಮಾಡಿರತಕ್ಕವರಿಂದ ಕ್ರಯವಾಗುವ ಸಂದರ್ಭದಲ್ಲಿ 24ನ ಸೆಕ್ಷನ್ ಅನ್ವಯವಾ ಹೊತ್ತು 3ನೆ ಯದರಿಂದ ಆಗುವ ಕಾಯಗಳಿಗೆ ಅದು ಲಾಗಾವಾಗುವದಿಲ್ಲ.

5. ಇಂಡಿಯನ್ ಲಾ ರಿಪೋರ್ಟ್ಸ್, ಬಾಂಬೆ ಸೀರೀಸ್, 24ನೆ ವಾಲ್ಯೂಮ್ 257ನೆ ಪೇಜಿನಲ್ಲಿ ರಿಪೋರ್ಟ್ ಆಗಿರತಕ್ಕ ಕೇಸಿನ ವಿದ್ಯೆಮಾನವು ಈ ಕೇಸಿನ ವಿದ್ಯೆಮಾನಕ್ಕೆ ಅನ್ವಯವಾಗುತ್ತೆ. ಅದರಲ್ಲಿ ಆಗಿರತಕ್ಕ ತೀರ್ಮಾನವನ್ನು ಅನುಸರಿಸಿ ಸಾಲಿ ಪಡಿದ ತಕ್ಕ ಸ್ಟಾಂಪ್ ಡೂಟಿಯು ಸಾಕಾಗಿರುತ್ತೆ.

ಈ ಕಾರಣಗಳನ್ನೆಲ್ಲಾ ಮೆಹರ್ಬಾರವರು ದಿವ್ಯ ಚಿತ್ತಕ್ಕೆ ತಂದು ಹಾಲಿ ಡಪ್ಯುಟಿ ಕಮಿಷನರ ಸಾಹೇಬರವರು ಮಾಡಿರತಕ್ಕ ಆರ್ಡರ್ ರದ್ದುಪಡಿಸಿ ದಸ್ತೈವಜು ರಿಜಿಸ್ಟರ್ನಿಂದ ವಾಪಸು ಕೊಡಿಸಿಕೊಡೋಣವಾಗಬೇಕಾಗಿಯೂ, ಮತ್ತು ಈ ಅರ್ಜಿ ದಾಖಲು ಪಡತಕ್ಕ ಬಗ್ಗೆ ಅರ್ಜಿದಾರನಿಗೆ ತಗಲಿರುವ ಖರ್ಚನ್ನು ರೀಪಂಡ್ ಮಾಡಿಸಿ ಕೊಡಬೇಕಾಗಿಯೂ ಸಹಾ ಪ್ರಾರ್ಥನೆ.

ಮೆಹರ್ಬಾ ಸಾಹೇಬರವರ ಪರಾಂಬರಿಕೆ ಬಗ್ಗೆ ಈ ಕಳಗ ಕಂಡ ಕಾಗದ ಪತ್ರಗಳನ್ನು ಹಾಜರ್ಮಾಡಿರುತ್ತೇನೆ.

1. ಮುನ್ಸಿಫ್ ಕೋರ್ಟಿನಿಂದ ಸುಬ್ರಮಣ್ಯ ಜೋಯಿಸರು ಪಡೆದ ಸೇಲ್ ಸರ್ಟಿಫಿಕೇಟ್.
2. ಡೆಪ್ಯುಟಿ ಕಮಿಷನರ್ ಸಾಹೇಬರವರ ಆರ್ಡರ್ ಕಾಪಿ
3. ದಸ್ತೈವಜು ನಕಲು.
4. ಇನ್ಸ್ಪೆಕ್ಟರ್ ಜನರಲ್ ಸಾಹೇಬರವರಿಗೆ ಬರಕೊಂಡ ಅರ್ಜಿ ಮತ್ತು ಅದರ ಜೈಲು ಸದರಿ ಆಯಾವರಿಗೆ ಬರಿಗ ನಂಬರ್ 1228ನೆ ಜವಾಬು ಇಂಡಾರು.

ರುಜು ಚನ್ನಗಿರಿ ರಾಮಣ್ಣ

(ENCLOSURE No. 5.)

OFFICIAL MEMORANDUM.

No. Fl. 5160—114-05-2, dated Bangalore, the 19th February 1906

Subject.

The levy of a deficit stamp duty and penalty in respect of a sale deed executed in his favor by one Nagarada Subramanya Jois of the Shimoga town.

The accompanying petition, registered as No. 3260, dated 31st January 1906, received in this office, from one Channagiri Ramanna, residing in the Shimoga town, is forwarded to the Deputy Commissioner of the Shimoga District for report. **Serial No. 2.**

Proceedings of the Government of His Highness the Maharaja of Mysore, Finance (Separate Revenue), May 1906.

Appeal from one Channagiri Ramanna, against the orders of the Shimoga Deputy Commissioner refusing to give him the benefit of the proviso to the explanation in Section 24 of the Stamp Regulation, II of 1900.

Letter No. 881—638, dated 23rd March 1906, from M. S. Narayana Rao, Esq., Deputy Commissioner, Shimoga District, to B. K. Venkatavaradiengar, Esq., Secretary to Government, General and Revenue Department.

Serial No. 3

With reference to your Memorandum No. Fl. 5160—S. R. 114-05-2, dated 19th February 1906, forwarding for report petition registered No. 3260, dated 31st January 1906, received from one Channagiri Ramanna praying for cancellation of my order regarding the levy of deficit stamp duty and penalty in respect of a sale deed executed in his favour, I have the honor to state as follows :—

1. The document in question relates to the sale of two lands bearing Survey Nos. 85 and 98 of the Santekadur village, Shimoga Taluk, for Rs. 95 by one Subba Jois, the purchaser of the said property for Rs. 77 in a sale held on 30th May 1905 in accordance with the orders of the Munsiff's Court, Shimoga. The sale was held subject to the encumbrance amounting to Rs. 400. The natural inference on the purchase of property subject to an encumbrance is that the consideration that is paid is not merely the amount that is paid at the time of the sale, but also includes the amount that has to be paid afterwards for the release of the encumbrance. (*Vide* explanation to Section 24, Stamp Act.) The stamp duty has to be calculated on the amount immediately paid plus the amount to be paid before the property can completely pass to the purchaser. In the case in question the consideration that was paid by the auction purchaser may be taken to amount to Rs. 477 and the amount realized by him for conveying the property to the petitioner thereof Rs. 495.

2. For the aforesaid reasons, I found there was deficiency of stamp duty and ordered its levy.

3. With regard to the case published on page 257 of Volume XXIV of the Bombay Series of the Indian Law Reports and relied on in para 5 of the petition, I beg to state that it lays down that rent reserved is not liable to *ad valorem* duty and has no bearing to the case under consideration. To claim the concession of the proviso under explanation to Section 24 of the Stamp Act as attempted in para 3 of the petition, the transfer to the mortgagee must have been made by the mortgagor, which is not the case here. The petition with enclosures received with the memorandum referred to above together with the original document and correspondence ending with the Shimoga Taluk Amildar's No. 491, dated 3rd March 1906, are herewith forwarded for reference and return of the latter file when no longer required.

The amount of duty and penalty has since been recovered and credited to C. No. 216, dated 13th March 1906, in the Shimoga Taluk.

Proceedings of the Government of His Highness the Maharaja of Mysore.

READ—

Serial No. 4

Petition Registered No. 3260, dated the 31st January 1906, from Channagiri Ramanna of Shimoga, stating that one Subramanya Jois purchased two lands for Rs. 77 in a public auction held in satisfaction of a Civil Court decree subject to their previous mortgage to himself (petitioner) for Rs. 400, that Subramanya Jois subsequently sold these lands to him for Rs. 95, and executed a sale deed on a stamp paper of the value of one rupee, that the Deputy Commissioner of the Shimoga District has levied an additional stamp duty of Rs. 4 and a penalty of Rs. 5 taking the mortgage money as part of the consideration for the sale without giving him credit for the stamp duty paid on the original mortgage deed in accordance with the proviso to the "explanation" to Section 24 of the Stamp Regulation, II of 1900, and requesting that the order of the Deputy Commissioner may be cancelled.

2. Letter No. 881—638, dated the 23rd March 1906, from the Deputy Commissioner of the Shimoga District reporting with reference to this office Memo No. Fl. 5160, dated the 19th February 1906, that the sale of the property having been effected subject to the previous encumbrance, the mortgage money also formed part of the consideration for the sale, that the stamp duty on the full amount, *i.e.*, Rs. (400+95) 495, was therefore levied under the "explanation" to Section 24 and that as the person who sold the property to the (petitioner) mortgagee was not the mortgagor himself the petitioner could not claim the benefit of the proviso to the "explanation" referred to.

Proceedings of the Government of His Highness the Maharaja of Mysore, Financial (Separate Revenue), May 1906.

Appeal from one Channagiri Ramanna against the orders of the Shimoga Deputy Commissioner refusing to give him the benefit of the proviso to the explanation in Section 24 of the Stamp Regulation, II of 1900.

Order thereon, No. Fl. 7430-8—S. R. 114-05-4, dated the 5th May 1906.

The Deputy Commissioner was right in including in the consideration for the transfer, the amount of the unpaid mortgage money to which the property sold was subject, as clearly required by the "explanation" to Section 24 of the Stamp Regulation. But as the purchaser of the property in the court sale stands in the place of the mortgagor as regards the right, title and interest in the property sold and as the "proviso" to the "explanation" refers only to the transfer of the property subject to a mortgage to the mortgagee and not necessarily by the mortgagor, the petitioner is entitled to the benefit of the above proviso.

To—The Deputy Commissioner of the Shimoga District, returning the enclosures.

The Deputy Commissioners of other Districts.

The Inspector-General of Registration

Endorsement No. Fl. 7439—S. R. 114-05-5, dated 5th May 1906.

ಶಿವಮೊಗ್ಗಾದಲ್ಲಿರುವ ಚನ್ನಗಿರಿ ರಾಮಯ್ಯನವರಿಗೆ ಇಂಡಾರಸು.

ಶಿವಮೊಗ್ಗಾದಲ್ಲಿರುವ ನಿಮ್ಮ ಸುಬ್ಬಾ ಜೋಯಿಸರು ನಮಗೆ ಬರದುಕೊಟ್ಟರುವ 20-11— **Serial No. 5** 1905ನೆ ಮಾರ್ಚ್ ಕ್ರಯಪತ್ರದ ಮೇಲೆ ಶಿವಮೊಗ್ಗಾ ಡಪ್ಯುಟಿ ಕಮಿಷನರವರು ಕಂ ಡ್ಯೂಟಿ 4ರೂ. ಮತ್ತು ಪೆನಾಲಿ, ಐದು ರೂಪಾಯಿಗಳನ್ನು ನಿಮ್ಮಿಂದ ವಸೂಲ ಮಾಡುವಂತೆ ಕೊಟ್ಟರುವ ಆರ್ಡರು ನ್ಯಾಯ ಸಂಮತವಿಲ್ಲವೆಂತಲೂ ಆರ್ಡರನು ರದು ಮಾಡಿ ಹುಕುಂ ಆಗಬೇಕೆಂತಲೂ ಬರದುಕೊಂಡ 31—1—06ನೇ ಮಾರ್ಚ್ಮಿನ 3260ನೇ ನಂಬರ ಅರ್ಜಿಯು ಶ್ರುತವಾಯುತು

ಸ್ಟ್ಯಾಂಪ್ ರೆಗ್ಯುಲೇಷನ್ 24ನ ಸೆಕ್ಷನ್ ಎಕ್ಸ್‌ಪ್ಲನೇಷನ್ ಪ್ರೊವೈಸೊ ಮೇಲೆಕಂಡ ಪತ್ರಕ್ಕೆ ಅನ್ವಯಿಸುತ್ತೆ. ಈ ವಿಷಯದಲ್ಲಿ ತಮಗೆ ಇದರ ಪ್ರತಿ ಕಮಿಷನರವರಿಗೆ ಬರೆದಿರುತ್ತೆ ನಿಮ್ಮ ಅರ್ಜಿಗೆ ಲಗತ್ತಿ ದ್ದ ಕಾಗದಗಳನ್ನು ಇದರೊಂದಿಗೆ ವಾಪಸು ಮಾಡಿರುತ್ತೆ.